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COMMITTEE ON NEBRASKA RETIREMENT SYSTEMS
March 2, 2005
LB 165, 365, 495

The Committee on Nebraska Retirement Systems met at 12:15 p.m. on Monday, March 2, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 165, LB 365, and LB 495. Senators present: Elaine Stuhr, Chairperson; John Synowiecki, Vice Chairperson; Patrick Bourne; Philip Erdman; and Marian Price. Senators absent: Don Pederson.

SENATOR STUHR: Good afternoon, ladies and gentlemen. We're ready to begin the hearing for the Nebraska Retirement Systems, and we'll start with introductions. And to my far right is Don Jones, who serves as our committee actuary; and next to him is Senator Marian Price from Lincoln; and Senator Pat Bourne from Omaha; our legal counsel is Jason Hayes; I am Elaine Stuhr from Bradshaw and I serve as Chair; and to my left is the Vice Chair of the committee, Senator John Synowiecki from Omaha; and next to him is Senator Phil Erdman from Bayard. And I understand that Senator Pederson from North Platte is ill and so will not be with us this afternoon. And our committee clerk is Kathy Baugh. Just a few instructions. Oh, and our page, I do want to recognize our page, Matt Rathje, and he is from York, Nebraska, so we're happy to have him. And he will be assisting anyone that has materials to hand out this afternoon. Just a couple announcements. Please turn off your cell phones or any pagers that you might have. Those wishing to testify should come to front of the room, and that helps to speed up the process. And when you are testifying, please print your name on the sheet, and also as you begin your testimony please spell your name, and that is for the transcribers so that they may accurately be able to record your presence. If you do have handouts, give those to the pages. And if you do not choose to testify, we do have an official record that could be sent around, and, Kathy, do we have something available that might be sent around? And then you can say if you are supporting or opposing the bill, and then indicate that after your name. Members of the audience, this just happened last week in another committee hearing. Please refrain from any display of emotion such as clapping or such. And today's bills, we will be hearing LB 165, LB 365, and LB 495, in that order. So testifiers will come forth, those as proponents of the bill, those wishing to testify in opposition, and those testifying in a neutral

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capacity. So I would like to welcome all of you. We have a very nice crowd this afternoon and want to thank you all for coming. And we will open the hearing now on LB 165. Senator Synowiecki.

LB 165

SENATOR SYNOWIECKI: (Exhibit 1) Thank you, Senator Stuhr, members of the committee. I'm John Synowiecki. I represent District 7. Today I bring LB 165 for your consideration, a bill to change the membership of the Public Employees Retirement Board. Under LB 165, the Public Employees Retirement Board would be expanded from eight to nine members to provide for the addition of a retired certificated school employee. Prior to January 1, 2005, the Public Employees Retirement Board consisted of three participants in the retirement system, one retired participant, and three members of the general public. Beginning January 1, '05, the structure of the board changed to include two members of the general public, one participant in the state employees system, one participant in the county employees system, one participant in the judges retirement system, one participant in the State Patrol, and two participants in the school retirement system--an administrator and a teacher. Under this configuration of the board there is no guaranteed position for any retiree. Retired school employees account for more plan members than county employees, judges, and State Patrol system participants combined, all of which have a representative on the board. Moreover, members of the school retirement system represent more than 75 percent of the total membership and contribute more than 80 percent of the total assets. However, school employees have only 25 percent representation on the Public Employees Retirement Board. I believe that LB 165 appropriately and logically adjusts the Public Employees Retirement Board representation by providing for a more corresponding relationship between system assets and system representation. I want to thank you, Senator Stuhr, and members of the committee for giving your full consideration to LB 165.

SENATOR STUHR: Okay. Thank you very much. Are there questions for Senator Synowiecki? Okay, thank you for

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presenting the information. Welcome.

JOE HIGGINS: Senator Stuhr, members of the Retirement Committee, I'm Joe Higgins, H-i-g-g-i-n-s. I'm a retired school employee who taught for 35 years. Today I represent and currently serve as secretary of the NSEA Retired Association with 3,200 members, all of who receive monthly pension checks from the Nebraska Public Employees Retirement System. I served as a member of the Public Employees Retirement Board for five years, from 1995 through 1999, as a representative of the school employees plan. I learned then of the importance of the participation of active plan members on the Retirement Board in setting policy for NPERS, as they managed the retirement system for the almost 90,000 public employees covered by the five state plans. Now, as a retiree, I know how important it is to have a retiree representing the more than 12,000 public school retired members currently receiving benefits from that system. The 12,000 school employee retirees represent a significant number of those currently receiving pensions from the state, and the input of their experiences with the system would add a great deal to the decision-making process of the Public Employees Retirement Board. The representation of those who are currently retired members of the system who have gone through the process of application and all of the steps necessary for retirees to fulfill their...in activating their pension is very important for that decision-making process on the PER board. I encourage your support of LB 165. I would be most happy to answer any questions that you might have. Thank you.

SENATOR STUHR: Thank you, Joe. Are there questions from the committee? Joe, you probably realize that last session that we did make an adjustment in the number.

JOE HIGGINS: I do.

SENATOR STUHR: What would you think about if making...right now, both of those are active from the school. What if we were to make one of those retired?

JOE HIGGINS: Well, as I said in my testimony, I think it is really important. I really did feel as a member of the PER board, as an active member contributing to the system,

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my input as a school employee was very important. But I want to tell you I did not know sic 'em as a retiree when I was a working school employee. And so, when we would discuss things that apply to retirees, my input was not very valuable. I have learned a lot about the input and the necessity of input for retirees in those five years now that I have been retired. So I don't think they should be in competition with each other for, Okay, who should serve? If there are 12,000 school retired school employees on this system, I think those 12,000 need the clear representation of the retired members.

SENATOR STUHR: Okay. All right, thank you. Are there other questions from the committee?

JOE HIGGINS: Thank you.

SENATOR STUHR: Thank you. Next proponent? Welcome.

SHARON NORE: Good afternoon, Senator Stuhr and the rest of the committee. I am Sharon Nore, N-o-r-e. I have been retired...I taught for 27 years. I've been retired for almost eight years. And I feel very strongly...I'm in support of this bill. I do think that representation is needed from the retired certificated teacher. I will read one thing that...I'm very nervous.

SENATOR STUHR: Just relax. You are doing great.

SHARON NORE: Okay. I'm relaxing. In not providing for a guaranteed retiree on the PERB the group that is receiving payments from the system is not guaranteed a representative. The plan exists to pay benefits and it seems only logical that planned beneficiaries would have some say in how the plan is administered. And then I'm merely repeating what the Senator said that retired school employees account for more members than all of the other combined, the county, the judges, and the State Patrol. It seems that we need to be on this board, that it needs to be redone again or put on. I feel very strongly. Thank you.

SENATOR STUHR: Okay. Thank you. Just a minute, maybe...just a minute. There might be some questions. Are there any questions? Okay. Senator Erdman.

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SENATOR ERDMAN: Are you still nervous? (Laughter)

SHARON NORE: Yes, I am. And you know what, I was telling somebody that you look about old enough to be my grandson. (Laughter)

SENATOR ERDMAN: Get the lady whatever she needs. (Laughter) We hope you'll come back and visit us again.

SHARON NORE: I will. Thank you.

SENATOR STUHR: Yes. Thank you. Next proponent. Are there others wishing to testify in support of the bill? Are there any wishing to testify in opposition of the bill? Those wishing to testify in a neutral capacity? Welcome.

ANNA SULLIVAN: (Exhibit 2) Senator Stuhr, members of the Retirement Committee, my name is Anna Sullivan. That's S-u-l-l-i-v-a-n. I'm the director of the Nebraska Public Employees Retirement Systems. The Retirement Board for many reasons didn't take a position. I don't know that they have a position on this particular bill. But I did want to share with the committee, just for the record, I have some handouts. And this is just what we provide the board when they have their training, when we do a retreat every year. It has to do with board duties and responsibilities. And it highlights the fiduciary responsibility that each board member has. And I won't read them all to you but you will see, the duty of loyalty, the duty of impartiality, the duty of prudent administration...these are fiduciary standards...the duty of maintaining reasonable costs of administration, the duty to inform and report. We really emphasize with the board that they represent everyone, and we do have a mixture of plan members, as has been cited. But that the county member is there; the county member takes off her county hat and represents every plan member--school members, Patrol member, judge member. It's very important as a fiduciary that the board understand that. And I just wanted you to see this, just for the record I think it's important that the fiduciary standard be on the record. I'd be happy to answer any questions if you have any.

SENATOR STUHR: Okay. Thank you. And are there any

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questions for Ms. Sullivan? I thank you for sharing that because for a number of years we did not even have all of the plan members represented on the board.

ANNA SULLIVAN: That's correct. We had an equal number, I think, of public members as to plan members. I think the testimony was good that input is a good word; input is a good word. But every member has a duty to every beneficiary, regardless of what plan that they're in, and they take that very seriously.

SENATOR STUHR: Okay. Thank you.

ANNA SULLIVAN: Thank you.

SENATOR STUHR: Thank you for your testimony. Are there others wishing to testify in a neutral capacity? Senator Synowiecki, do you wish to close?

SENATOR SYNOWIECKI: Waive closing.

SENATOR STUHR: He waives closing. So that closes the hearing on LB 165. We will now open the hearing on LB 365. Go ahead.

LB 365

JASON HAYES: (Exhibits 3 and 4) Good afternoon, Senator Stuhr and members of the Nebraska Retirement Systems Committee. For the record my name is Jason Hayes, H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 365. This is a proposal that was originally submitted by the Public Employees Retirement Board to this committee. LB 365 would permit members on the Public Employees Retirement Board, who represent the five public retirement systems administered by the board, to be either an active employee member or a retired member. Currently, some member positions are limited to only permitting active employee participants to serve on the board. This active employee limitation includes the state employee, the county employee, and both school employee representatives. It is important to note that this proposal would maintain the current number of members on the board and may give the

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Governor additional flexibility when considering appointments of retired participant members. Also, an additional amendment has been submitted and passed out by the Chair for consideration of the committee in discussion here today. AM 0653 would insert language stating that beginning on January 1, 2007, the two public members on the board shall not own any funds within the retirement system established by the Class V School Employees Retirement Act. This is a progression of a measure adopted last year by the Legislature indicating the public members on the board would not own any funds administered by PERB in order to be eligible for appointment. This amendment would help to ensure that public members on PERB do not have a conflict of interest while serving on the board. This amendment would not affect any current public member's service but would impact future appointments and reappointments to the board. And that's the conclusion of my testimony.

SENATOR STUHR: Okay, thank you. Are there any questions for Jason? Just to go over that again since we are offering the amendment, actually the amendment refers to the public members.

JASON HAYES: It would just affect the two public members that are participants on PERB.

SENATOR STUHR: Okay. All right, thank you for that clarification. Okay, those wishing to testify in support of LB 365? Are there those wishing to testify in opposition? Those wishing to testify in a neutral capacity? Okay, that's going to be a short hearing. All right, that closes the hearing on LB 365. We will now open the hearing on LB 495 and I will turn the Chair responsibilities over to Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Stuhr. Senator Stuhr will now open the hearing. Thank you.

LB 495

SENATOR STUHR: (Exhibits 5 and 6) Good afternoon, Senator Synowiecki and members of the Nebraska Retirement Systems Committee. My name is Senator Elaine Stuhr, S-t-u-h-r,

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representing the 24th Legislative District, and I'm here to introduce LB 495. LB 495 would establish a medical cost of living adjustment for members of the School Employees Retirement System. Such adjustments would be similar to the medical COLA adopted by the Legislature in 2001 for members in the Class V retirement system. The reason for implementing this additional benefit is because there is a concern that the current retirement benefit provided to retired teachers who have been retired for ten or more years is not adequate due to the rising cost of living and increasing health costs. There are testifiers here today who will explain the challenges facing these retired teachers, especially those who retired prior to the Legislature increasing the overall retirement benefits. Under LB 495, during the first annual adjustment period the formula to calculate such benefit would be the number of creditable service years, divided by 20, with the resulting ratio not to exceed 1, multiplied by the product of \$10 times the number of years an annuity has been received after retirement. This adjustment would only be available to those members who have received an annuity for ten or more years, and the total annual benefit adjustment received by a retired school employee would be capped at \$250 per month or \$3,000 per year. It should be noted that LB 495 was introduced this year in order to meet the requirement that additional plan benefits must be introduced during a 90-day session. It is my understanding that an actuarial study will need to be completed, as well as possibly an additional review concerning IRS tax implications prior to moving this bill out of committee. It might also be possible for another study, in order that we can resolve these issues that are before us. You have received the yellow handout that tries...and gives you some examples of how this might work. With that I conclude my opening.

SENATOR SYNOWIECKI: Thank you, Senator Stuhr. Any questions? Questions of Senator Stuhr? Seeing none, thank you. Proponent testimony for LB 495. Proponents.

BOB KUHN: (Exhibits 7-15) Good afternoon, Senator Stuhr and Retirement Committee. I'm Bob Kuhn, K-u-h-n, and I represent the Nebraska Association of Retired School Personnel. We have 26 local associations across Nebraska from Omaha to Scottsbluff and we have about 2,200 members

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presently. A lot of our presidents of our local associations are in attendance today, and so we think that we have a good representation to support this bill today. We have visited with each one of you senators about this, and so I would just like to go through the folder that you are receiving now and will review briefly the information in this folder, and then I'll get into some of our hurdles that we've had with the IRS and constitutional issues. On the first page in your folder, there is a list of the average teachers' salaries of each state in the United States. I've highlighted the ones that we've used in a study to determine average benefits for the various age levels that will be shown in a chart a little later. The states that we used in this study were Georgia, Alabama, Arkansas, New Mexico, Montana, North Dakota, Oklahoma, and South Dakota. Generally, an average teacher salary is the reflection of the cost of living in that state. And so six of these states in this study have a lower average salary with their active teachers than Nebraska's. Only Georgia and Alabama has a higher average salary. So in other words, it takes more to live in Nebraska than the six states that we've included in this study. On the second chart, and a lot of this information was taken from a study that was done by Dr. Stan Wisniewski in Washington, D.C., who is an attorney and he is an economist, and he does a lot of pension surveys and has become a national expert on pension systems across the United States. And some of the criteria that he used in his study was they had to be statewide systems; they had to be teacher-only or teacher and public employees. The second criteria was that only state retirement systems that are covered by Social Security were included in the study. They have to be well-funded, above the 80 percent funded ratio level. Another criteria was an active-to-retiree ratio of at least 2.5-to-1, but no greater than 3.7-to-1 and have an automatic COLA. And then the last criteria that was used in this study was the geographical distribution. We used contiguous states like Wyoming, South Dakota, Iowa, and nearby states, such as Montana and North Dakota. So the first chart that you see is a bar graph that shows the pension benefit comparison of Nebraska and eight comparative states. And so, again, these states are the ones that are highlighted on that first sheet in your folder. The second chart breaks this down in terms of dollars. And if you'll notice the 90-plus age group of those eight comparative

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states, the average benefit received was \$11,637 per year. In Nebraska the 90-plus age group gets \$3,861. And on the 85-89 group I handed out to a couple of you senators earlier, some information that's not correct. On the 85-89 age group, under comparative states, the information that I gave you showed \$11,086. It's actually \$12,141. And I think we put a new chart in there that reflects that, so that's accurate now. The 85-89 year age group in Nebraska receives \$4,892. So as you see when we start out with the age group 60-64, there is not a whole lot of difference in the benefits received. As we get older in Nebraska, the benefits really drop off rapidly. And it's gotten to the point here at the end where a lot of our older teachers are living at poverty level, and we would really like to help that situation out with our older teachers. The next chart is a bar graph, this blue chart which represents the ratio of benefits received by retirees under age 60 for every dollar received by retirees over 90. And if you'll notice, the Nebraska bar goes clear across to almost \$7, so I think it comes out \$6.95. So for every retiree under 60 our older group gets a lot less than the younger group does, by far in comparison to other states across the country. And if the medical COLA is enacted, and we get the \$250 for our older group, we're still going to be at the bottom of this group of folks from other states. So that's how desperate it's gotten. The blue chart shows...or the blue page shows why this has happened in Nebraska. And this is inclusive of everything that's been done in the other states; we just could get it on one page. And so the actual, like South Dakota started their COLA in 1974. Wyoming started some catch-up provisions in the '70s, and so a lot of states have had COLAs for a long, long time. And Nebraska, you know, we've got a small one going in 1996, and then we started our COLA like in the year 2000. So that's basically why our older teachers have fallen behind so rapidly because we've not had a cost of living adjustment available to that group of people. In New Mexico they've had ad hoc COLAs, and the way they do that is similar to Wyoming. They'll give you \$2 or \$3 a month for the number of years you've been retired, and then they'll also add in \$2 or \$3 a month times your years of service as a teacher. And when you do that four or five times in a 12, 13-year period, it becomes significant; it really has. And it helps the older retiree keep up with the cost of living. In South Dakota and

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several other states, they make their benefit formula retroactive. So if you retired 20 years ago and the benefit formula is increased, every person that retired in South Dakota as a teacher has a...they reactivate or they redo your benefit formula and reformulate what your benefit is. In, Nebraska, of course, we can't do because of constitutional issues. And the next page is the number of school employees, the retiree data. And we did include the beneficiaries here, and we have the breakout of the number of people that have retired in Nebraska in the retirement system for school employees broken down into age groups and the number in each age group. And then on the last page, I just have some information from our stationery if someone would need to contact us, our phone number and e-mail address is on there if you have any questions that you might think of when we finish here. Some of our issues that we've had are constitutional issues and we retained Bob Bartle, who will give an opinion on the constitutional situation of this bill. In June of this last year, the IRS came out with some new minimum distribution regulations, and so we worked with a fellow by the name of Larry Isaacs, who is an actuary for the IRS in Washington, D.C., and we've retained an attorney in Grand Island by the name of Jerry Janulewicz, and he has been working on the IRS regulations and how they relate to this bill. And we had it all worked out, the stars were all lined up, and we did our actuarial study in Omaha, based on an IRS opinion that Jerry obtained from the IRS. And basically what they were saying at that time was it's okay to award the \$250 to the \$100 range, but then after that you could not increase that benefit by \$10 a month. You would have to use some kind of a cost of living index. So like we would have to use, like the CPIW or the CPIU, so we couldn't increase it \$10 a year. Well, that was going to cheapen up the cost for this situation. But then after we got this and we had it all set up, the IRS fellow called Jerry and he said, we have conferred with our committee, and we've decided that that will not work. And so they couldn't give us an opinion that that would be okay. So just last week in a visit with Larry Isaacs, the actuary, we have worked out a system that we believe will work, and he has given us a verbal agreement. And basically, what we have to do is go back and count from the day a person retired. We go forward with all the CPI index increases based on the Bureau of Labor Statistics index, and you can

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use a couple of different indexes, but you count all the cost of living increases that have not been awarded until present or until the enactment of the bill, and then you have to go back and add up the ones that have been awarded. And the difference can be applied to increase a benefit. So you could do it that way and use, like the CPIW, like we presently use in our system, and that would probably be the easiest way to dovetail this into the bill. The other way would be to take a retired teacher's salary at the time he retired and come forward and look at the ratio between what the salary was at the time that teacher retired and what it is now. So, for example, if a teacher retired in 1980 with a salary of \$10,000, and that salary is \$40,000 now, you can use that increment, that 1-to-4 increment to increase that person's benefit. You would multiply that times his basic benefit, or you could use the lesser of that, as long as that ratio does not exceed what the IRS maximum would be. So you have an IRS-allowed adjustment based on either the cost of living or the difference in the salary between the time a teacher retired and what the present salary would be. We've looked at that a couple different ways, and we figured it out on some actual examples. And it would probably be the easiest way to do that would be to use the CPIW index, add up all the increases, subtract the awards that have been made to the benefit in the last four or five years, and then come up with your maximum. And the \$250 and the \$100 would work up until about 1996, so all the retirees that retired in 1996 and before, it appeared would be eligible for this kind of benefit. And when we look at that, the 75 percent purchasing power law, or bill, really covers everybody past that. And so we feel like this would be a fair way to pick up a lot of those people that retired in 1996 or before that. It would also lower the number of people that would be involved. It would also sunset, basically, the distribution of this award. It would get cheaper each year as we have people leave the system, either if they pass away or if they lose their benefit because of the option that they chose. So there's a way we can do it, but what we're going to have to do is we need to have Jerry Janulewicz fill out a form and send it to the IRS. They will need to sit down as a committee and review it and write an opinion, and it's going to take some time to do that, and I don't think we can get it done this year. So I would request that we have a study to get this process implemented, especially

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since they've changed their mind twice already. And so I feel like it's really important that we have that committee with Larry Isaacs in Washington, D.C. to have it all written out and make it final. And so that's kind of where we are. It's been not very pleasant navigating two rivers here--the constitutional river and the IRS river. But I think we're at a point where the verbal okay has been given by Larry Isaacs in Washington, D.C.; he thinks it will work, so. And I have Bob Bartle here today to testify on the constitutional part. So are there any questions?

SENATOR SYNOWIECKI: Thank you, Mr. Kuhn, for your testimony.

BOB KUHN: Thank you.

SENATOR SYNOWIECKI: And it was important we get the bill introduced this session, as Senator Stuhr indicated, and we can continue to study the issue and you could continue to bring us information and we could continue an ongoing dialogue during the interim. Any questions of Mr. Kuhn? Thank you for your testimony.

BOB KUHN: As we've met, we've really appreciated your openness and your honesty and "upfrontness," being up front with us, and we really appreciate that.

SENATOR SYNOWIECKI: Thank you, Mr. Kuhn. Any other proponent testimony for LB 493? Proponent testimony.

JOHN JENSEN: Senator Stuhr, members of the committee, I'm John Jensen, J-e-n-s-e-n. I was a trustee...a retired teacher from Omaha, trustee on the Omaha School Employees Retirement System from 1979 until 2003, when I retired, and I'm past president of the National Council on Teacher Retirement. Currently, I'm treasurer of the Nebraska State Education Association-Retired, and I'm here on behalf of over 3,200 members of the NSEA-Retired, in support of LB 495. The two top concerns of retired Americans are their health and how to pay for their healthcare. Our retired teachers are the very ones who have educated generations of children here in Nebraska, and they are especially hard hit because outside of Omaha and outside of Medicare, there is no help for them in paying for their healthcare benefits at

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all, and they have a very difficult time doing this. This is why the bill in Omaha was designed the way it is, and that's why this LB 495 was designed to do what it was supposed to do. I said "outside of Omaha" because in 2001 Omaha passed such a bill, and I want to thank Senator Bourne for sponsoring that bill and I want to let you know that we have very many, many grateful retired teachers in Omaha because of it, because it works and it works as intended. I remember that it eventually became a Christmas tree bill towards the end of the session--part of it--an ornament on the Christmas tree bill. And I want you to know that that ornament still, Senator Bourne, lights up the lives of our retired teachers every day. It was very much needed and it does work as intended. It doesn't pay for everything. It's not an end-all be-all but it is an immense help. I like the plan for several reasons. It is not tied to any final average salary, so anyone with 20 years of service gets exactly the same benefit. I take Zocor; that costs the same whether you are a superintendent or a retired cafeteria worker; the cost is the same. Therefore, we set it up so the benefit would be the same. It gradually increases with age because costs for medical care increase gradually with age; sometimes much more than gradually. And it is affordable because it's not tied to a percentage increase, rather a fixed-dollar amount, and therefore, it was designed that way so that actuaries didn't go crazy over the costs; my apology to Mr. Jones. So that's the way it was designed, and as a result it works as expected and it's been very, very helpful to our oldest retired teachers. Due to the IRS minimum distribution rules, everything has changed, and we have to be able to sort through this and figure out what we can do so that we don't go up against the IRS. And it's amazing that these minimum distribution rules were designed to keep the highly compensated employees from ripping off pension systems. It was designed to keep the CEOs from taking too much, too quickly out of their pension system. It was never designed to keep the lowest-paid people from getting something that they absolutely need. Call it unintended consequences, or whatever. I would hope that some time in the future there would be a federal bill to change this law so the IRS would take these minimum distribution rules and allow such a bill to take place. In the meantime, I echo what Bob said, and that is, please hold the bill over. We would appreciate that and will try to get

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something that does fit everyone's rules in the meantime.
Thank you very much. I'll be glad to answer questions.

SENATOR SYNOWIECKI: Thank you for your testimony,
Mr. Jensen. Are there questions from the committee? Seeing
none, thank you. Additional proponent testimony, LB 495.

ROBERT BARTLE: (Exhibit 14) Senator Synowiecki, Senator
Stuhr, members of the committee, I'm Robert Bartle and I
have asked that my legal opinion that was alluded to in
Mr. Kuhn's testimony be distributed, so you have that. I
was asked by the Association of the Retired School Personnel
to review this proposed legislation in light of Nebraska's
statutory and constitutional limitations. In that capacity,
I bring to the table the service of a former Assistant
Attorney General. I've also served, after the full-time
position between '76 and '81, as a Special Assistant
Attorney General for the late Robert Spire and currently
serve in that capacity for Attorney General Bruning from
time to time on special assignment matters. I'm pleased to
report that it's easier to navigate, in my opinion, the
parameters, if you will, of the Nebraska Constitution and
our statutory basis than it is with respect to the IRS.
When Mr. Kuhn contacted me as far as the IRS was concerned,
I was happy to refer him to someone who knew a lot more
about tax than I did. As I told Bob, I don't even do my own
taxes. On the other hand, the Nebraska constitutional
parameters, and I've outlined them again in my three-page
letter to you, are fairly straightforward. We have within
our constitution a very specific allowance with regard to
retirement systems for state employees. And we have that
there in order that the Legislature in its wisdom, as long
as you don't do it on an arbitrary or capricious basis, are
allowed to fulfill the rationale of good public servants,
good public morale, the ability to hire good people to
teach, to work within our schools, to administer, to have
any capacity of jobs. In order to do that, you have to have
some flexibility in terms of your role in administering
pensions. So you have, within our constitution, that
specific allowance. The other concern that you have in my
position then is to make sure your legislation does not
constitute special legislation that would discriminate
unfairly. In the U.S. constitutional sense, we call that
"the equal protection clause." We don't have that

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particular clause in our Nebraska Constitution; rather we have Article III, Section 18, a prohibition against, quote, "special legislation." And to get around that, you just simply have to illustrate that you have a neutral class and not a closed class, and it based on a sound economic purpose. And this is. You are recognizing in the outset of this bill that there is this inequity created with particular import, and in some cases a very significantly, economically adverse consequence to certain members who simply fall within a certain age group or retirement position. And you've addressed that, and you've addressed that in an economically open and neutral way. That being the case, it is my opinion and I think the seminal case the court had considered as long ago as 1964 in that Gossman v. State Employees Retirement System case, I think you fall squarely within that rationale that our Supreme Court considered in '94, and this would then pass constitutional muster if reviewed by the Nebraska Supreme Court. So that was my assignment and you have my opinion. I would be happy to answer any questions that any of you may have.

SENATOR SYNOWIECKI: Thank you, Mr. Bartle. Any questions? Any questions? Seeing no questions of the committee, thank you for your testimony.

ROBERT BARTLE: Thank you, Mr. Chair.

SENATOR SYNOWIECKI: Additional proponent testimony, LB 495.

MARK INTERMILL: Thank you, Mr. Chairman. My name is Mark Intermill, spelled I-n-t-e-r-m-i-l-l. I am here today representing AARP-Nebraska and to offer AARP's support for the efforts to try to improve the teacher pensions for older retirees and also to let you know that we are committed to completing an actuarial evaluation. We've been working with the Nebraska Association of Retired School Personnel and had engaged the services of an actuary to do an evaluation of the previous, that the way the bill is currently structured, and we are committed to continuing to do that so that we can find a solution to what we consider to be a problem that is within the budgetary constraints of the state and that actually provides some assistance to those individuals who need the help. And with that, that's...I will conclude.

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SENATOR SYNOWIECKI: Thank you. Questions? Questions? No questions from the committee. Thank you for your testimony. Additional proponent testimony, LB 495.

HERB SCHIMEK: Madam Chair, members of the committee, my name is Herb Schimek, representing the Nebraska State Education Association. We are in favor of the concept of this bill. We've just been handed a five-year projection for the rates for the active employees, which are now percolating through our system, to say the least. And so therefore, we're going to wait to see what the cost is for formal support of the bill. But we do support the concept. We think it's working well in Omaha, and if there is any way that we can possibly work it, we will be supportive.

SENATOR SYNOWIECKI: Questions of the committee? Seeing none, thank you for your testimony, Mr. Schimek.

HERB SCHIMEK: Thank you.

SENATOR SYNOWIECKI: Additional testimony, LB 495; proponent testimony. Opponent testimony, LB 495. Anyone opposed to the bill? The committee will now entertain neutral testimony, LB 495.

ANN SULLIVAN: Senator Synowiecki and members of the Retirement Committee, for the record my name is Anna Sullivan, S-u-l-l-i-v-a-n, director of the Nebraska Public Employees Retirement Systems. And we're here in a neutral capacity only to make note of a couple of items, and I think Mr. Schimek just addressed those. As you know or will know, we do have funding issues with all of our defined benefits plans right now. We did have a downturn in the market; if those of you remember 2001 and the 9/11, of course how could we forget, but the impact that had on our pension assets. We had negative returns for the first time in many years in 2001. We had negative returns in 2002. We had a small positive return in 2003. We are yet to recover from those negative returns. Those are three years, one a positive but a small positive. Right now, as you know we have submitted as our budget request, funding, additional funding needs for our school plan. And what we would want the committee and, of course, the Legislature to be very careful about is the cost of a benefit improvement like this, understanding, of

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course, the idea, certainly I think, anyone would want to support our retirees. And we're there. I talked to you at a previous bill about our role for our plan members. But we also have a duty to the plan that it's fiscally sound. And what we would be interested in knowing is the source of funding. Right now, we're asking for additional money to maintain the current program, and if there has been any funding source identified on how this benefit could be adopted. I'm sorry; I know that's not a very positive note to end on, but I do feel like it's my duty to bring it to your attention and to put it on the record, most of all. I'd be happy to answer any questions if you have any.

SENATOR SYNOWIECKI: Any questions of the committee? Seeing no questions, thank you for your testimony.

ANNA SULLIVAN: Thank you.

SENATOR SYNOWIECKI: Any additional neutral testimony relative to LB 495? Seeing none, that will conclude...excuse me, I'm sorry. Senator Stuhr, would you like to close?

SENATOR STUHR: If I may just stay right here?

SENATOR SYNOWIECKI: Absolutely.

SENATOR STUHR: I just personally want to thank everyone that is here today, and particularly Bob Kuhn who has been working very hard on the issue, and many others. I know that this is an issue we've been working on for a number of years, and we will continue to work on it. And we know that there are some concerns as far as funding, as Mr. Schimek pointed out, and Anna. But you have our pledge that we will continue to work on this issue with you. Thank you.

SENATOR SYNOWIECKI: Thank you, Senator Stuhr. I apologize for cutting you off.

SENATOR STUHR: That's all right.

SENATOR SYNOWIECKI: That will now conclude the testimony for LB 495. Thank you everyone for attending today's hearings.